

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BENSLEY CONSTRUCTION, INC.,  
on its own behalf and on behalf  
of all others similarly situated,

Plaintiff,

v.

Civil Action No. 05-11249-GAO

MARSH & MCLENNAN COMPANIES, INC.,  
MARSH, INC., ACE USA, ACE INA, AMERICAN  
INTERNATIONAL GROUP, AMERICAN RE-  
INSURANCE COMPANY, ARTHUR J.  
GALLAGHER & CO., HILB ROGAL & HOBBS,  
COMPANY, WILLIS GROUP HOLDINGS, LTD.,  
WILLIS NORTH AMERICA, INC., WILLIS  
GROUP LTD., UNIVERSAL LIFE RESOURCES,  
INC. (d/b/a ULR INSURANCE SERVICES, INC.),  
THE CHUBB CORPORATION, USI HOLDINGS,  
INC., METLIFE, INC. PRUDENTIAL  
FINANCIAL, INC., UNUMPROVIDENT  
CORPORATION, THE ST. PAUL TRAVELERS  
COMPANIES, INC. ZURICH AMERICAN  
INSURANCE COMPANY, LIBERTY MUTUAL  
GROUP, INC., LIBERTY MUTUAL INSURANCE  
COMPANY, LIBERTY MUTUAL FIRE  
INSURANCE COMPANY, EMPLOYERS  
INSURANCE COMPANY OF WAUSAU and ST.  
JAMES INSURANCE COMPANY LTD.,

Defendants.

**OPPOSITION OF LIBERTY MUTUAL GROUP, INC., LIBERTY MUTUAL  
INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE  
COMPANY, EMPLOYERS INSURANCE COMPANY OF WAUSAU AND  
ST. JAMES INSURANCE COMPANY LTD. TO  
MOTION TO RE-SCHEDULE HEARING**

Defendants Liberty Mutual Group, Inc., Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, Employers Insurance Company of Wausau and St. James Insurance Company, Ltd.<sup>1</sup> (collectively, the "Liberty Defendants") submit this Opposition to the Motion to Re-Schedule Hearing filed by other defendants in this action.

### **BACKGROUND**

The Court has requested oral argument on December 13, 2005 (a date that is the result of one previous postponement) on, among other matters, the Liberty Defendants' motions to dismiss, the plaintiff's motion to remand and other defendants' motion to stay. Following briefing of all these motions in this Court, the Judicial Panel on Multidistrict Litigation (JPML) issued a conditional transfer order stating that this matter would be transferred and consolidated with MDL 1663 absent any opposition. The plaintiff and the Liberty Defendants have filed motions to vacate the conditional transfer order. As a result, pending the JPML's determination, this Court retains jurisdiction over the matter.

### **ARGUMENT**

The Motion to Re-Schedule Hearing is merely a restatement of the motion to stay this action pending the JPML's transfer determination filed previously by the other defendants in this action. The motion to stay has been briefed extensively by

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<sup>1</sup> St. James Insurance Company, Ltd. ("St. James") has appeared in this case specially to argue that it has not been served properly and that the Court may not exercise jurisdiction over it. Because the Court has not yet ruled on St. James' motion to dismiss, St. James' appearance in the form of its Opposition to the Motion to Re-Schedule Hearing should also be considered a special appearance as it is compelled to respond to the motion but does not wish to subject itself to the jurisdiction of this Court.

the parties, as have the Liberty Defendants' motions to dismiss, the Plaintiff's motion for remand and the Plaintiff's motion to substitute parties. The Court's request for a hearing on the motion to stay and the other motions will allow the parties to respond to the Court's concerns. The Motion to Re-Schedule Hearing, however, seeks to deny the Court the opportunity to weigh the arguments asserted by all parties in support of and against the motion to stay - a motion that remains within the power of this court to decide. Granting the relief sought in the Motion to Re-Schedule Hearing would effectively allow the motion to stay without the proper consideration of the arguments against it. Therefore, the Court should deny the Motion to Re-Schedule Hearing and address directly the merits of the motion to stay this proceeding.

Further, it would be unjust and inefficient to delay the determination of the Liberty Defendants' motions to dismiss any longer, which would be the effect of allowing the Motion to Re-Schedule Hearing. As articulated in their motions to dismiss, the Liberty Defendants contend that they do not belong in this lawsuit. Additionally, the Liberty Defendants were not among the defendants who removed this case from Essex Superior Court to federal court. In their removal papers, the other defendants argued that the Liberty Defendants had been joined fraudulently to defeat federal diversity jurisdiction. Thus, the Liberty Defendants are not the only parties asserting that their involvement in this action is without basis. As a result, further delay of a decision on the Liberty Defendants' motions to dismiss,

first served in Massachusetts Superior court over five months ago, would be unjust and inefficient.

Accordingly, the Liberty Defendants request that the Motion to Re-Schedule Hearing be denied.

Respectfully submitted,

LIBERTY MUTUAL GROUP, INC.,

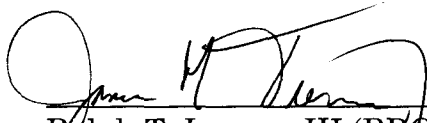
LIBERTY MUTUAL INSURANCE COMPANY,

LIBERTY MUTUAL FIRE INSURANCE  
COMPANY

EMPLOYERS INSURANCE COMPANY OF  
WAUSAU and

ST. JAMES INSURANCE COMPANY LTD.

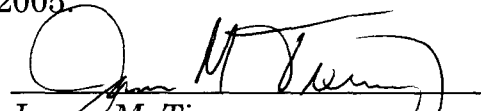
By their attorneys,

  
\_\_\_\_\_  
Ralph T. Lepore, III (BBO #294420)  
James M. Tierney (BBO #644945)  
HOLLAND & KNIGHT LLP  
10 St. James Avenue  
Boston, MA 02116  
(617) 523-2700

Dated: December 4, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party on the attached service list by electronic notice and first class mail on December 4, 2005.

  
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James M. Tierney

SERVICE LIST FOR BENSLEY CONSTRUCTION, INC. ET AL.  
V. MARSH & MCLENNAN COMPANIES, INC., ET AL

Daniel S. Savrin, Esq.  
Bingham McCutchen LLP  
150 Federal Street  
Boston, MA 02110  
(Attorneys for Marsh & McLennan Companies, Inc. and  
Marsh, Inc.)

John AD Gilmore, Esq.  
DLA Piper Rudnick Gray Cary  
One International Place, 21<sup>st</sup> Floor  
Boston, MA 02110-2600  
(Attorneys for The Chubb Corporation)

Laura Besvinick, Esq.  
Hogan & Hartson LLP  
Mellon Financial Center  
1111 Brickell Avenue, Suite 1900  
Miami, FL 33131  
(Attorneys for The Chubb Corporation)

Brien T. O'Connor, Esq.  
Timothy J. Casey, Esq.  
Ropes & Gray LLP  
One International Place  
Boston, MA 02110  
(Attorneys for American Insurance Group, Inc.)

Roberta A. Kaplan, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(Attorneys for American Insurance Group, Inc.)

Kenneth G. Gilman, Esq.  
Gilman and Pastor, LLP  
60 State Street  
37<sup>th</sup> Floor  
Boston, MA 02109

Paul C. Curnin, Esq.  
Michael J. Garvey, Esq.  
David H. LaRocca, Esq.  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017  
(Attorneys for The St. Paul Travelers Companies, Inc.)

Joseph Hamilton, Esq.  
Mirick, O'Connell, DeMallie & Lougee, LLP  
100 Front Street  
Worcester, MA 01608-1477  
(Attorneys for Unum Provident Corporation)

Deborah E. Hryb, Esq.  
Patrick W. Shea, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
1055 Washington Boulevard, 9<sup>th</sup> Floor  
Stamford, CT 06901  
(Attorneys for Unum Provident Corporation)

John R. Middleton, Jr., Esq.  
Lowenstein Sandler, PC  
65 Livingston Avenue  
Roseland, NJ 07068  
(Attorneys for Prudential Financial, Inc.)

Daniel B. Winslow, Esq.  
Patricia R. Rich, Esq.  
Duane Morris LLP  
470 Atlantic Avenue, Suite 500  
Boston, MA 02210  
(Attorneys for MetLife, Inc.)

Ian Crawford, Esq.  
Todd & Weld LLP  
28 State Street, 31<sup>st</sup> Floor  
Boston, MA 02109  
(Attorneys for USI Holdings Corp.)

Robert H. Pees, Esq.  
Vadim Sarma, Esq.  
Akin Gump Strauss Hauer & Feld, LLP  
590 Madison Avenue  
New York, NY 10022-2524  
(Attorneys for USI Holdings Corp.)

David Gabianelli, Esq.  
Ray L. Wong, Esq.  
Ned M. Gelhaar, Esq.  
Hancock Rothert and Bunshoft LLP  
Four Embarcadero Center, Suite 300  
San Francisco, CA 94111  
(Attorneys for Universal Life Resources, Universal Life  
Resources, Inc. (D/B/A ULR Insurance Services, Inc.)

James V. Masella III, Esq.  
Richard C. Pepperman, II, Esq.  
Anastasia A. Angelova, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, NY 10004-2498  
(Attorneys for Willis Group Holdings, Ltd., Willis North  
America, Inc., and Willis Group Ltd.)

Juliane Balliro, Esq.  
Perkins Smith & Cohen LLP  
One Beacon Street, 30<sup>th</sup> Floor  
Boston, MA 02108-3106  
(Attorneys for Hilb Rogal & Hobbs Company)

Ingrid Hlawaty, Esq.  
Edwin M. Larkin, Esq.  
Lina M. Viviano, Esq.  
Winston & Strawn, LLP  
200 Park Avenue  
New York, NY 10166-4193  
(Attorneys for Arthur J. Gallagher & Co.)

Terry M. Grimm, Esq.  
Stephen C. Schulte, Esq.  
Winston & Strawn LLP  
35 West Wacker Drive  
Chicago, Il 60601  
(Attorneys for Arthur J. Gallagher & Co.)

Bruce W. Edmands, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
One International Place  
Boston, MA 02110  
(Attorneys for Zurich American Insurance Company)

John F. Collins, Esq.  
Molly Lehr, Esq.  
Dewey Ballantine LLP  
1301 Avenue of the Americas  
New York, NY 10019  
(Attorneys for American Re-Insurance Company)

Philip T. Newbury, Esq.  
Mark J. Claflin, Esq.  
Howd & Ludorf, LLC  
65 Wethersfield Avenue  
Hartford, CT 06114  
(Attorneys for ACE USA, ACE INA)

H. Lee Godfrey, Esq.  
Neal S. Manne, Esq.  
Johnny W. Carter, Esq.  
Jeffrey R. Seely, Esq.  
Susman Godfrey LLP  
1000 Louisiana Street, Suite 5100  
Houston, TX 77002  
(Attorneys for ACE USA, ACE INA)